IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4333 of 2007()

CRMP.963/2007 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM

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REVN. PETITIONER: ACCUSED:

T. BABURAJ,
CHIEF ENGINEER (UNDER SUSPENSION),
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM,
RESIDING AT C.E.QUARTERS, OBSERVATORY COLONY,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

BY ADV. SRI.P.A.AHAMED
SRI.THOUFEEK AHAMED

RESPONDENTS: STATE & COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. V.N. SAJI, S/O. NARAYANAN,
VELIYAMKUNNATHU, KULAMAVU P.O., IDUKKI DISTRICT.

BY ADV. SRI. P.N. SUKUMARAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 4333 OF 2007

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Dated this the 11th day of December, 2007.

ORDER

The revision petitioner, who is shown as the accused in a private complaint filed as Crl. M.P. No. 963/2007 before the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, challenges the order dated 31.10.2007 passed by the Special Judge forwarding the private complaint to the Director, VACB, Thiruvananthapuram for conducting an investigation as provided under Section 156(3) Cr.P.C.

2. The learned counsel appearing for the revision petitioner made the following submissions before me in support of his attack against the impugned order:-

The work in question took place at Manjeri in Malappuram district which is within the territorial jurisdiction of the Special Court at Kozhikode and the Trivandrum Special Court had absolutely no territorial jurisdiction to entertain a complaint of this nature. In **Shadili v. Uthaman** (1988(2) KLT 191) it has been held that a magistrate can order investigation of a case

which the court can enquire into and try under Chapter XIII Cr.P.C and if the Magistrate has no territorial jurisdiction over the place where the offence was committed then the police cannot investigate the offence pursuant to the order passed under Section 156(3) Cr.P.C. When the Special Court at Trivandrum could not have tried the offence committed in Manjeri in Malappuram District it could not have entertained the complaint as well. Consequently, it could not have forwarded the complaint under Section 156(3) Cr.P.C. If at all, the complaint could be forwarded under Section 156(3) Cr.P.C that could be done only by the Special Court at Kozhikode which alone has territorial jurisdiction over Malappuram District. On the merits also just because there was a departmental enquiry conducted against the revision petitioner it does not follow that the allegations in the complaint are true so as to be taken cognizance of or forwarded to the police under Section 156(3) Cr.P.C.

3. I am afraid that I cannot agree with the above submissions. The revision petitioner against whom no notice has been issued by the Special Court, has no locus standi to question

the order forwarding of the complaint to the Vigilance Director for investigation under Section 156(3) Cr.P.C at the pre-cognizance stage. It is well settled that an accused person has no right to be heard during the course of investigation. The question as to whether the court should take cognizance of the alleged offences or to forward the complaint to the police under Section 156(3) Cr.P.C is one within the discretion of the court and where the court decides to forward the complaint to the police without taking cognizance of the offences alleged in the complaint, it is only an interlocutory order against which no revision will lie. Even otherwise, the allegations against the revision petitioner is that while employed as the Chief Engineer (Roads and Bridges), Trivandrum he committed serious irregularities and misappropriation of funds by sanctioning revised estimates for the works of Roads Division, Manjeri in Malappuram district in 6 cases with excess over-estimate ranging from 21% to 38% in violation of the powers stipulated for the Chief Engineer vide GO (P)106/6/Fin. dated 06.03.2006 and as such he had obtained large amounts of money from the contractors in that area

thereby causing heavy loss to the public exchequer. Thus, the alleged act of sanctioning of the revised estimate was done by the revision petitioner while holding the post of Chief Engineer (Roads and Bridges), Trivandrum and not from Manjeri in Malappuram District. When a part of the cause of action (in the case of the revision petitioner, the major part) had taken place at Trivandrum, it is futile for the revision petitioner to contend that the Trivandrum court had no territorial jurisdiction to entertain the complaint.

4. The decision in Shadili's case was in respect of offences committed outside India without the sanction from the Central Government as mandated by Section 188 Cr.P.C and the same cannot be pressed into service by the revision petitioner to contend for the position that the Trivandrum Special court had no territorial jurisdiction to entertain the complaint.

5. There cannot be any quarrel that the private complaint filed before the Special Court, prima facie, discloses the commission of cognizable offences namely, those punishable under Section 13(2) of the Prevention of Corruption Act for the

alleged commission of criminal misconduct falling under Sections 13(1)(c), 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act, 1988. The Special Judge was perfectly within his power in forwarding the same under Section 156(3) Cr.P.C to the police namely the Director of Vigilance who is having State wide jurisdiction to conduct the investigation. I see no ground to interfere with the impugned order . This revision is accordingly dismissed.

V. RAMKUMAR, JUDGE.

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